IN THE

Supreme Court of the United States

October Term, 1934

No. 18 Original

UNITED STATES OF AMERICA
Plaintiff,

vs.

STATE OF ARIZONA
Defendant.

SUPPLEMENTAL AFFIDAVIT OF B. B. MOEUR, GOVERNOR OF ARIZONA, IN OPPOSITION TO THE APPLICATION FOR RESTRAINING ORDER

STATE OF ARIZONA
County of Maricopa } ss.

B. B. Moeur being first duly sworn, deposes and says:

I now am and at all times since January, 1933, have been the duly elected, qualified and acting Governor of the State of Arizona and make this affidavit for and on behalf of said State as defendant in the above entitled cause.

That since my affidavit dated the 30th day of January, 1935, and filed in this Court on or about the 1st day of February, 1935, in opposition to the plaintiff's application for a restraining order, I have obtained from the Secretary of War a photostatic copy of the plans of the Parker Dam, reservoir and appurtenant works as recommended by the Chief of Engineers of the United States Army and approved by the Secretary of War on the 5th day of January, 1935, and from an examination thereof, it appears that no provision is made for the convenient passage of commerce by navigation over or by said dam, and that said dam, if constructed, will be an insuperable obstacle to navigation on the Colorado River between points above and points below its location.

Subsequent to the 30th day of January, 1935, there has also come into my possession from the Department of the Interior what purports to be a full, true and correct copy of the alleged contract dated February 10th, 1933, between the United States of America, acting by and through the Secretary of the Interior, and the Metropolitan Water District of Southern California (mentioned and referred to in Paragraph X of the Bill of Complaint), under the terms of which it is alleged the plaintiff is obligated to construct Parker Dam, reservoir and appurtenant works; that I am advised by counsel, and upon such information state, that contrary to the allegations in the Bill of Complaint, said contract does not purport to obligate the United States to construct said dam for the purpose of improving navigation, nor does it obligate the United States to maintain and operate said dam, res-

ervoir or appurtenant works other than at the cost and expense of the Metropolitan Water District until such time as and when the United States may make joint use, for its own account, of said structures, whereupon and thereafter the cost of such operation and maintenance is to be borne jointly by the United States and the Metropolitan Water District in proportion to their respective uses.

I am further advised by counsel, and so state, that said contract shows upon its face that said dam, reservoir and appurtenant works are to be built for the primary use and benefit of the Metropolitan Water District of Southern California for the desilting and use of the waters of the Colorado River for the generation of power and the diversion of approximately 1,000,000 acre-feet of said waters per year to the coastal plain of Southern California for municipal, domestic and other beneficial uses.

There is attached to this affidavit as "Exhibit A" a true and correct copy of said contract so furnished by the Department of the Interior.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of February, 1935.

B. B. MOEUR

Subscribed and sworn to before me this 16th day of February, A. D. 1935.

ETHEL McMURCHIE,
Notary Public.

My commission expires January 21, 1936.
(Notarial Seal)

EXHIBIT "A"

COOPERATIVE CONTRACT FOR CONSTRUCTION AND OPERATION OF PARKER DAM

Article

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COOPERATIVE CONTRACT FOR CONSTRUCTION AND OPERATION OF PARKER DAM

1. This contract, made this 10th day of February, 1933, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or suplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the act of Congress approved March 4, 1921 (41 Stat. 1367, 1404), section 25 of the act of Congress approved April 21, 1904 (33 Stat. 189, 224), and the act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon project act, and the Metropolitan Water District act of the Legislature of the State of California (Stats. 1927, chap. 429), as amended, particularly section 5, subdivision (9) thereof, between the United States of America, hereinafter referred to as the United States, acting for that purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and the Metropolitan Water District of Southern California, a public corporation, hereinafter referred to as the District, organized and existing under and by virtue of the laws of the State of California.

Witnesseth:

EXPLANATORY RECITALS

2. Whereas, these parties have heretofore on April 24, 1930, and September 28, 1931, entered into two contracts entitled respectively "Contract for Delivery of Water" and "Supplementary Contract for Delivery

of Water," which said contracts provide, among other things, for the delivery by the United States to the district each year from the Boulder Canyon Reservoir of quantities of water at a point in the Colorado River immediately above the district's point of diversion (at or in the vicinity of the proposed Parker Dam hereinafter referred to), and have also entered into two contracts (dated April 26, 1930, and May 31, 1930), for the purchase by the district from the United States of certain quantities of electrical energy to be generated at Hoover Dam, for the pumping of said water into and in an aqueduct to be constructed by the district; and

3. Whereas, the said point of delivery and the proposed Parker Dam are approximately ten (10) miles above the boundaries of the Colorado River Indian Reservation as designated by the act of Congress approved March 3, 1865 (13 Stat. 559), and there are now being irrigated, by pumping, approximately 6,000 acres of land within said reservation, and water has been reserved and appropriated pursuant to said act as amended or supplemented and particularly by the act of April 4, 1910 (36 Stat. 273), for additional lands within said reservation susceptible of irrigation from the Colorado River, the reclamation of which will require diversion from the river by construction of a dam, or by pumping or both, and will require drainage of said lands by pumping, for all of which electrical energy is needed; and

4. Whereas, there are also in Arizona, additional public and other lands in the vicinity of said reserva-

tion and also in the Gila Valley susceptible of irrigation from the Colorado River, but requiring pumping for such purposes, for which electrical energy will be needed, and the United States has now under way an investigation of possible reclamation of such areas as authorized by section fifteen (15) of the said Boulder Canyon project act; and

5. Whereas, the reclamation of said Indian and public and other lands will be rendered more feasible by the availability of stored water and electrical energy at the proposed Parker Dam, and the floods of the tributaries of the Colorado River between Hoover Dam and Parker Dam will be controlled, and navigation improved, by said dam; and

6. Whereas, the Secretary is authorized by said act of April 21, 1904 (33 Stat. 224), to build the proposed Parker Dam for the reclamation of all or any portion of the irrigable lands on the Yuma and Colorado River Indian Reservations in California and Arizona; and such authority has been reserved in the Arizona enabling act (act of June 20, 1910, 36 Stat. 570, 575), and

7. Whereas, the district is engaged in a project involving the construction of an aqueduct for the purpose of diverting and conveying water from the Colorado River to the metropolitan area of Southern California for domestic, municipal and other useful purposes, and as a means of such diversion, desire storage in the main stream of the Colorado River at the site of the proposed Parker Dam, for the purpose, among

others, of desilting water, reducing pump lift and developing incidental electrical energy for pumping water into and in said aqueduct and other uses subordinate to the said aqueduct project, and the district desires to utilize the proposed Parker Dam in common with the United States and is willing to pay to the United States the entire capital cost of construction of said dam, as hereinafter set forth, and is further willing that one-half of the power privilege created by said dam shall be reserved to the United States for the purposes of irrigation and drainage of lands in Arizona within the Colorado River Indian Reservation, as now constituted, and the Gila or Gila-Parker project, without contribution by the United States to the capital cost of the proposed dam, as hereinafter set forth, and is also willing that the dam be utilized by the United States for the storage and diversion of water for the requirements of Indian, public, and other lands in Arizona; and

8. Whereas, the Secretary is authorized by the act of Congress approved March 4, 1921, to receive moneys from the district as aforesaid and to effect therewith the construction of the proposed works as though said moneys were specifically appropriated for said purposes; and

9. Whereas, funds are not otherwise available for the construction by the United States of said dam and the provision of storage and diversion facilities and of appurtenant works for the irrigation and drainage of said Indian, public, and other lands in Arizona and the cooperative construction of the said dam and

works, as herein provided, will be mutually advantageous to the parties hereto, and the cost of said dam and appurtenant works will be materially less if constructed during the period of completion of the Hoover Dam now under construction than would otherwise be the case;

Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

CONSTRUCTION BY THE UNITED STATES

10. The United States will, with funds advanced by the District as hereinafter provided, and for the purposes stated in this contract, construct in the main stream of the Colorado River at a point in the vicinity of Parker, Arizona, shown on the map attached hereto and described herein as Exhibit A, a dam, referred to herein as the Parker Dam, creating thereby a storage reservoir having a maximum water surface elevation of approximately four hundred fifty (450) feet above sea level. (U. S. Geological Survey datum.) Upon like conditions the United States will also construct outlet works, pressure tunnels, penstocks, and other appurtenant structures to the extent that such structures may be necessary and/or economically desirable as parts of the original installation, and such facilities for navigation as the Secretary may find necessary. All buildings intended solely for the use of either party hereto shall be constructed at the sole expense of the party for whom such facilities shall be provided. The dam and appurtenant structures shall

be so constructed that subsequent installation of diversion or outlet works shall be possible in the most feasible manner for canal connections with lands within the Colorado River Indian Reservation and with public and other lands in Arizona now or hereafter included in projects constructed under the Reclamation Law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and, if either party hereto requires it, so that one-half of the total installed capacity of electrical generating equipment may be located upon the Arizona side of the River and one-half on the California side. Outlet works, pressure tunnels, penstocks, connections for canals and appurtenant structures not required by the district shall be completed under this contract only to the extent necessary to permit their subsequent completion and use without risk or damage to the remainder of the work.

In carrying out the proposed work hereunder and in acquiring supplies, materials, and equipment therefor, the United States may proceed directly under the method commonly referred to as force account, or may proceed by construction contract. In the event that such contract or contracts shall be let with reference to the construction of said dam, or the acquisition of supplies, materials, or equipment therefor, the letting of such contracts shall be governed by the provisions of section 3709, United States Revised Statutes.

FUNDS TO BE PROVIDED BY THE DISTRICT

11. The district will advance to the United States, not to exceed the sum of thirteen million dollars ($13,-

000,000), or so much thereof as may be (a) the cost of preparation of plans and specifications described in article 13 hereof; (b) the actual cost of the said dam, including acquisition of lands and rights of way for reservoir and other incidental purposes, outlet works, pressure tunnels, and penstocks, to be constructed hereunder, and of the district's proportionate share as determined by the Secretary, of such power plant buildings and generating, transforming, and high voltage switching equipment as may be installed for the joint use of the United States and the district, and (c) required to meet any overhead and general expense incurred by the United States in carrying out this contract.

Said funds will be furnished to the United States by payment from time to time to the Secretary or such fiscal agent as he may designate in advance of expenditure thereof by the United States. The Secretary will submit estimates of the monthly anticipated expenditures not less than sixty (60) days in advance and the district will then advance the amount not less than thirty (30) days prior to the month in which such funds shall be estimated to be required. If the United States effects such construction by contract, such contract shall recite that the United States shall not be liable for any loss occasioned by the failure of the district to advance funds as herein provided. The district agrees to hold the United States harmless from all claims whatsoever arising from any such failure. If the funds provided by the district are at any time insufficient, the United States will stop work (if proceeding under force account), when the funds so

advanced are exhausted, or give notice to the construction contractor to stop work (if proceeding by construction contract), when the funds so provided are about to be exhausted, and will not resume or give notice to resume work until additional and sufficient funds are provided by the district; and, in any event, the United States shall not be obligated by this agreement beyond the expenditure of the amount actually provided by the district, whether the proposed works are completed or not. The failure of the district to provide funds shall not impose any liability on the district other than to hold the United States harmless from the consequences thereof, but the United States may be relieved, at its option, of any obligation under this contract, if such failure continues for twelve (12) successive months, after submission of estimate therefor, by the Secretary's giving the district written notice of the termination of any further obligation of the United States hereunder.

The cost of the proposed works shall embrace all expense of whatever kind, growing out of or resulting from said works, including any overhead and general expense (as conclusively estimated by the Secretary) incurred by the United States in carrying out this contract. Nothing contained in this article is to be construed as obligating the United States to expend or Congress to appropriate money for any share of (a) said power plant buildings or (b) said generating, transforming and high voltage switching equipment intended for the joint use of the parties hereto.

NO OBLIGATION BY THE UNITED STATES TO PAY FOR WORKS CONSTRUCTED

12. The United States shall not be under any obligation to repay to the district, or otherwise contribute toward, the cost of any works built with funds provided by the district.

PREPARATION OF PLANS AND SPECIFICATIONS

13. The designs and specifications for all construction or other work under this contract (including exploratory and preparatory work) shall be prepared by the United States with the cooperation of and at the cost of the district, and shall be approved in writing by the general manager and chief engineer of the district, or such other officer as the directors thereof may designate, prior to performance thereof or the letting of contracts for such work.

DURATION OF CONTRACT

14. Upon written notice from the district to the Secretary that funds will be available to carry out the work to be constructed hereunder, the United States agrees to submit within thirty (30) days following such notice its first estimate of funds required during the first thirty (30) days of work hereunder and to proceed thereafter with reasonable diligence. It is contemplated that as far as practicable, the proposed works shall be constructed coincidentally with the construction of Hoover Dam and the filling of the

reservoir thereby created and that any contract let by the United States for the erection of Parker Dam shall so provide; but neither the United States nor the district shall incur liability to the other through the noncompletion of said works within said period. This contract shall terminate on December 31, 1945, unless prior thereto the district shall have advanced sufficient funds for all works to be constructed by the United States hereunder, and in the event of such termination, all rights of the district under this contract shall cease, and the uncompleted works, together with the rights to the use thereof, shall vest in the United States.

POWER AND OTHER PRIVILEGES

15. I. The interests of both parties require and it is agreed that the water surface of the reservoir to be created by Parker Dam shall be maintained as nearly as possible at a level of 450 feet above sea level (U. S. Geological Survey datum) at the dam.

II. It is agreed that the United States shall have and may exercise the following rights and such incidental authority as may be necessary to make them effective:

(a) The right to control all water passing the dam; provided, however, that the water level stated in article 15 (I) hereof shall not be arbitrarily reduced but may be temporarily reduced from time to time to a minimum elevation of 440 feet above sea level, and the water level shall not be reduced below said mini-

mum level except in cases of emergency affecting the safety of the said dam and appurtenant works.

(b) The right, without contribution to the cost of the dam built under this contract, to one-half the power privilege created thereby for use in the irrigation and drainage of lands in Arizona within the Colorado River Indian Reservation as now constituted and the Gila or Parker-Gila project, as determined by the Secretary and for other purposes incidental to said Colorado River Indian Reservation and Gila or Parker-Gila project; that is to say, the right to pass through such generating equipment as it may install, one-half the total available flow at the dam at any given time, after deductions for diversions being made above the dam for the district's aqueduct and for the irrigation of (1) the Colorado River Indian Reservation, as now constituted, and (2) public and other lands in Arizona, now or hereafter included in projects constructed under the reclamation law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to so utilize such portion of the balance of the power privilege as aforesaid as may not be used by the district for the time being,

(c) The right to connect with such transmission system as the district may construct for the purpose of utilizing any power transmission capacity in excess of the district's requirements, for the transmission of power from Hoover Dam to Parker Dam for general use within the Colorado River Indian Reservation, as now constituted, and Gila or Parker-Gila

project, as determined by the Secretary; provided that such excess capacity shall be subject to reasonable operating conditions fixed by the district, and that the United States shall pay to the district the cost of transmission of such power as may be transmitted by use of such excess capacity hereunder;

(d) The right to connect with Parker Dam and/or the reservoir created thereby by means of a canal (including such outlet and diversion features at Parker Dam as may be necessary or advisable) with lands within the Colorado River Indian Reservation, as now constituted, and with public and other lands in Arizona or California, now or hereafter included in projects constructed under the reclamation law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to thereby divert such quantities of water as may be consistent with the Colorado River compact and the Boulder Canyon project act.

III. It is agreed that the district shall have and may exercise the following rights and such incidental authority as may be necessary to make them effective:

(a) The right to one-half of the power privilege created by the proposed Parker Dam for the purpose of developing electrical energy for pumping water into and in the said aqueduct and other uses incidental to said aqueduct project in California; that is to say the right to pass through such generating equipment as it may install, one-half the total available flow at the dam at any given time, after deductions for diver-

sions being made above the dam for the district's aqueduct and for the irrigation of (1) the Colorado River Indian Reservation, as now constituted, and (2) public and other lands in Arizona, now or hereafter included in projects constructed under the reclamation law and supplementary legislation, or otherwise, subject to the consent and approval of the Secretary, and the right to utilize for said purpose such portion of the balance of the power privilege as aforesaid as may not be used by the United States for the time being.

(b) The right to divert water from the said Parker Dam and/or the reservoir created thereby, by means of an aqueduct, canal or other appropriate works (including such outlet and diversion features at Parker Dam as may be necessary or advisable) for domestic, municipal and other beneficial use within the area of the district, as now or hereafter constituted, in California, and to thereby divert such quantities of water as may be consistent with the Boulder Canyon project act, the Colorado River compact and the said contracts heretofore entered into between the United States and the district and described and referred to in Article 2 hereof.

INSTALLATION OF MACHINERY

16. Machinery and equipment for generating, transforming, and high voltage switching of energy for the sole use of the district shall be installed, owned and operated by the district at its own expense. The district shall not be liable for the cost of generating

or other electrical equipment installed for the sole use of the United States.

OPERATION AND MAINTENANCE OF RESERVOIR, DAM AND OUTLET WORKS

17. The United States will operate and maintain the reservoir, dam and outlet works, to, but not including shut-off valves, and reserves the right to direct the control of all water passing the dam for any and all purposes; provided that contracts now in force between the parties hereto shall not be thereby impaired. So long as the United States shall make no use of the reservoir, the cost of operation and maintenance (which shall include repairs and replacements and a reasonable amount, as determined by the Secretary, for general expenses and overhead, but excluding contingent liabilities and/or damages) shall be paid monthly in advance by the district to the Unted States within sixty (60) days of submission of estimates therefor. If and when the United States shall use or authorize the use of said reservoir for diversion of water and/or development of power, the annual cost of maintenance and operation of the reservoir and dam (as hereinabove in this paragraph limited and defined) shall be pro-rated upon the basis of the diversions by each party into their respective aqueducts, canals and power plants, and shall be paid in direct proportion to the uses so made by the district and the United States.

OPERATION AND MAINTENANCE OF POWER PLANT AND POWER PLANT BUILDINGS

18. The district will operate and maintain at its own cost all buildings and equipment used solely by it for the generation of electrical energy, from and including shut-off valves. The United States will operate and maintain at its own cost all buildings and equipment used solely by the United States for the generation of electrical energy, subject to the availability of appropriations therefor by Congress, and said operation and maintenance shall be effected by the United States through such agency as the Secretary shall designate.

TITLE

19. Title to the dam and all other structures erected by the United States, whether utilized by it or by the district, or by both, shall remain in the United States.

UNITED STATES TO BE HELD HARMLESS

20. The district agrees to save the United States, its officers, agents, and employees harmless from all claims whatsoever arising out of the construction and maintenance of said dam, and from all claims whatsoever arising out of such operation thereof as may be necessitated by the requirements of the district. The district agrees to pay all damages resulting from the flooding of lands, and, to the extent that lands within the Chimehuevi Indian Reservation are dam-

aged, payment therefor will be made to the United States for the benefit of said Reservation.

ACCESS TO WORK AND TO BOOKS AND RECORDS

21. Accredited officers of the district shall have the right of ingress to and egress from all work done under this contract, both in progress and after completion, and the right at all reasonable hours to examine and make copies of any books, records, drawings, or specifications thereof; and the United States shall have a like right as to all pertinent books, records, drawings, and specifications of the district. Upon demand and at not less than thirty-day intervals, the United States will furnish to the district detailed statement of all costs and expenditures in connection with and/or chargeable against the proposed Parker Dam project.

EXISTING CONTRACTS BETWEEN THE UNITED STATES AND THE DISTRICT NOT AFFECTED

22. Existing contracts between the United States and the district shall remain in full force and effect and unaltered by the provision of this agreement.

TRANSFER OF INTEREST IN CONTRACT

23. No voluntary transfer of this contract, or of the rights hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the district, whether by volun-

tary transfer, or otherwise, shall be subject to all the conditions of the reclamation law and supplementary legislation, and also subject to all the provisions of this contract, to the same extent as though such successor or assign were the original contractor hereunder.

RULES AND REGULATIONS

24. This contract is subject to such rules and regulations, conforming to the reclamation law and supplementary legislation and other statutes cited in this contract, as the Secretary may from time to time promulgate; provided, however, that no right of the district hereunder shall be impaired or obligation of the district hereunder shall be extended thereby; and provided, further, that opportunity for hearing shall be afforded the district by the Secretary prior to promulgation or modification of any such rules and regulations.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

25. This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to the act of Congress approved August 19, 1921 (42 Stat. 171), entitled "An act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and

Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved in section 13 (a) of the Boulder Canyon project act.

DISPUTES AND DISAGREEMENTS

26. Whenever a controversy arises out of this contract, and if the disputants then agree to submit the matter to arbitration, the district shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five (5) days after their first meeting, such arbitrators not so elected shall be named by the senior judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

MEMBER OF CONGRESS CLAUSE

27. No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,

By RAY LYMAN WILBUR,
Secretary of the Interior.

Attest:

NORTHCUTT ELY.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

By W. P. WHITSETT,
Chairman of the Board of Directors.

No. 18 ORIGINAL

In the Supreme Court
OF THE
United States

October Term, 1934

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF ARIZONA,
Defendant.

DEFENDANT'S MOTION FOR LEAVE TO FILE REPLY BRIEF

Defendant respectfully shows unto the Court that it was not until March 18, 1935, that it received copy of plaintiff's brief in the above entitled cause in support of its application for a restraining order and in opposition to defendant's motion to dismiss the bill of complaint, notwithstanding the fact that said brief was filed with the Clerk of this Court prior to date of argument. Defendant, therefore, was not advised of the Government's points and authorities when the case was argued.

WHEREFORE, it prays leave to file the accompanying brief in reply.

JOHN L. SULLIVAN,
Attorney General,

JAMES R. MOORE,
Special Assistant Attorney General.
Solicitors for Defendant.

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UNITED STATES OF AMERICA,
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STATE OF ARIZONA,
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DEFENDANT'S REPLY BRIEF

ARGUMENT

Summary

1. The contract between the United States and the Metropolitan Water District (Governor Moeur's Supplemental Affidavit, Appendix to Answer and Appendix to Plaintiff's Brief) shows that Parker Dam may not be used for either flood control or reregulation of water discharged from Boulder Canyon Reservoir.

2. The United States not having complied with the laws of Arizona in reference to the appropriation of water, it is prohibited from diverting water from the Colorado River in carrying out the provisions of the Reclamation Law.

3. As Arizona became vested with title to the waters and the bed and banks of the Colorado River, a navigable stream, as an attribute of sovereignty, as distinguished from a grant from Congress, upon its admission to the Union on an equal basis with the original thirteen states, Congress had no constitutional power to reserve any right, title or easement therein.

I.

PARKER RESERVOIR NOT AVAILABLE FOR FLOOD CONTROL OR REREGULATION OF WATER DISCHARGED FROM BOULDER RESERVOIR.

The Government's brief lays great stress upon the adaptability of Parker Reservoir to control floods between Boulder Dam and Parker Dam and to reregulate discharge of water from Boulder Reservoir, which it asserts will improve navigation.

An analysis of the contract between The Metropolitan Water District and the Government discloses:

1. That the storage reservoir to be created by Parker Dam will have a maximum water surface elevation of approximately 450 feet above sea level (Contract, Article 10).

2. That the interest of both the Water District and the Government require that the water surface of the reservoir be maintained as nearly as possible at the level of 450 feet above sea level (Contract, Article 15, I.).

3. That the water level stated in Article 15 (I) viz., 450 above sea level, may not be arbitrarily reduced by the Government, but may be temporarily reduced from time to time to a minimum of 440 feet above sea level.

Therefore, if the maximum water elevation, (crest of dam) is 450 feet, which it is agreed shall be maintained as nearly as possible, there is no reserved storage by which either floods may be controlled or the discharge of water from Boulder Dam reregulated. All floods originating about the Dam and all excess discharges from Boulder Reservoir will necessarily pass over the crest of the Dam, if the water elevation is maintained, as provided in the contract, at its maximum elevation of 450 feet above sea level. It is, therefore, apparent that the parties to the contract have in mind the maintaining of a high head of water for the generation of the maximum amount of power, rather than providing reserve storage for flood control or reregulation of water discharged from the Boulder Reservoir.

II.

THE UNITED STATES IS WITHOUT AUTHORITY TO DIVERT WATER FROM COLORADO RIVER FOR RECLAMATION OF PUBLIC AND INDIAN LANDS WITHOUT PERMIT FROM THE STATE OF ARIZONA.